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BEFORE THE
FEDERAL ELECTION COMMISSION

OFFICE OF GENERAL
COUNSEL

PATRICIA D. CORNWELL

Boston, MA 02109

Complainant,

v.

ANCHIN, BLOCK & ANCHIN LLP

1375 Broadway, 21st Floor

New York, NY 10018

EVAN H. SNAPPER

57 Saxonwood Road

Fairfield, CT 06825

Respondents.

MUR No. 6656

COMPLAINT

COMPLAINT

This complaint is filed pursuant to 2 U.S.C. § 437g(a)(1) and 11 CFR 111.21 by Patricia D. Cornwell ("Cornwell") against her former concierge business management firm Anchin, Block & Anchin LLP ("Anchin") and its former principal, Evan H. Snapper ("Snapper"). Anchin and Snapper have violated the law by intentionally making public the on-going investigation of Cornwell by the Federal Election Commission ("the Commission" or "FEC"). See 2 U.S.C. § 437g(a)(12); 11 C.F.R. §§ 111.21(a), 111.24(b). Anchin and Snapper intentionally disclosed the pendency of such investigation through the public filing of a motion in on-going litigation in federal court

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in Boston, for the purpose of gaining a litigation advantage.¹ Such information neither constituted the introduction of evidence, nor could it have been properly introduced pursuant to the Federal Rules of Evidence or the Federal Rules of Civil Procedure.

Jurisdiction

1. "Any person who believes that a violation of any statute over which the Commission has jurisdiction has occurred . . . may file a complaint . . ." 11 C.F.R. § 111.4(a).

2. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed . . . a violation of [FECA], the Commission, shall . . . notify the person of the alleged violation" and "shall make an investigation of such alleged violation." 2 U.S.C. § 437g(a)(2).

3. The Commission has jurisdiction over 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12), as well as 11 C.F.R. §§ 111.21 and 111.24(b).

Background

4. Cornwell, along with Cornwell Entertainment, Inc. ("CEI") (in which Cornwell is sole shareholder), and her spouse Staci Gruber, Ph.D. ("Dr. Gruber") sued Anchin and Snapper for negligent performance of professional services, breach of fiduciary duty, breach of contract, conversion, intentional interference with advantageous relations, equitable forfeiture, violation of the Massachusetts and New York Consumer Protection Acts and New York common law, and defamation (i.e., libel). The action has been proceeding in federal court in the District of Massachusetts since October 13, 2009,

¹ Anchin and Snapper represented that the investigation of Cornwell remains open, while Anchin has received a "no action" letter from the Commission. Defs.' Mot. and Mem. of Law Re: Gov't Inv. into Campaign Finance Violation at 2-3, *CEI et al. v. Anchin, Block & Anchin LLP, et al.*, No. 09-11708-GAO [Doc. 169] (D. Mass. Aug. 13, 2012) (attached as Exhibit 1).

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in a lawsuit styled *CEI et al. v. Anchin, Block & Anchin LLP, et al.*, No. 09-11708-GAO ("the lawsuit" or "the District Court action"). It is scheduled for trial in January of 2013.

5. Cornwell alleges in the lawsuit, *inter alia*, that Snapper caused a check in the amount of \$5,000 to be issued payable to him, with a memo line indicating that it was a gift from Cornwell to Snapper's daughter, Lydia, on the occasion of her Bat Mitzvah. Cornwell contends that she has never met Lydia Snapper and did not authorize the check.

6. Within weeks of the filing of that lawsuit, Anchin and Snapper sought to make Cornwell the target of a criminal investigation carried out by the Department of Justice ("DOJ"), and, thereafter the subject of a Commission investigation. When Cornwell learned of these activities later, she amended her Complaint in the lawsuit to allege that such actions on the part of Anchin and Snapper, i.e., blaming her for their own mishandling of political contributions, constituted, *inter alia*, breaches of their fiduciary duties to her.

7. In late November or early December of 2010, the DOJ informed Cornwell's counsel that it was closing the investigation and she was not a target.

8. On January 3, 2011, Snapper pled guilty to causing the submission of false statements to the Commission. 18 U.S.C. § 1001.

NO. 1:
ANCHIN'S AND SNAPPER'S UNLAWFUL DISCLOSURE OF COMMISSION
INVESTIGATION

9. On August 13, 2012, Anchin and Snapper made a written public filing with the District Court stating that Anchin received a "no action" letter from the Commission, but that, with respect to Ms. Cornwell "[t]he FEC investigation remains open." Defs.' Mot. and Mem. of Law Re: Gov't Inv. into Campaign Finance Violation at 2-3, *CEI et al.*

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v. Anchin, Block & Anchin LLP, et al., No. 09-11708-GAO [Doc. 169] (D. Mass. Aug. 13, 2012) (attached as Exhibit 1). Anchin and Snapper did not request leave to file this document under seal, although a number of documents in the lawsuit have been filed in that fashion. Therefore, this court filing, which is available on line through PACER, makes public the theretofore confidential Commission investigation of Cornwell (as well as the purported "no action" letter issued to Anchin).

10. Anchin and Snapper were prohibited from disclosing such information. "Any notification or investigation . . . shall not be made public . . . by any person without the written consent of the person . . . with respect to whom such investigation is made." 2 U.S.C. § 437g(a)(12). The Commission's regulations are unequivocal on this point as well: No FEC investigation or findings "shall be made public . . . by any person or entity without the written consent of the respondent with respect to whom . . . the investigation [is] conducted." 11 C.F.R. § 111.24(b). *See also* 11 C.F.R. § 111.21 (no "investigation conducted by the Commission . . . shall be made public . . . by any person or entity" without written consent).

11. Anchin and Snapper did not secure Cornwell's written consent to disclose any information whatsoever.

12. Anchin and Snapper knew they were prohibited from disclosing such information. In Anchin's April 5, 2010 letter to the Commission, Anchin requested that the subject of the letter "remain confidential pursuant to 2 U.S.C. § 437g(a)(12) and 437g(a)(12)(A) and 11 C.F.R. §§ 4.5(a) and 111.21." Letter from James M. Cole & Michael E. Toner to Ann Marie Terzaken at 1 (Apr. 5, 2010) (attached as Exhibit 2).

Anchin and Snapper have thus stripped from Ms. Cornwell the same confidential treatment they sought for themselves.

13. Anchin's and Snapper's public disclosure of the Commission's investigation was gratuitous and wholly unnecessary to their motion. The motion sought exclusively to preclude evidence "concerning the Department of Justice . . . investigation into Patricia Cornwell," *not* the Commission's investigation. See Exhibit 1 at 1. Thus, they disclosed such confidential information for no other purpose than to attempt to prejudice and embarrass Cornwell.

PRAYER FOR RELIEF

14. Wherefore, Cornwell requests that the Commission:

- (a) Find reason to believe that Snapper and Anchin have violated 2 U.S.C. § 437g(a)(12) and 11 C.F.R. § 111.24(b), and conduct an immediate investigation under 2 U.S.C. § 437g(a)(2); and
- (b) Determine and impose appropriate sanctions for any and all violations, including but not limited to a fine of up to \$7,500 each under 11 C.F.R. § 111.24(b).

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Respectfully submitted,

PATRICIA D. CORNWELL

By her attorneys,



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Dated: October 1, 2012

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VERIFICATION

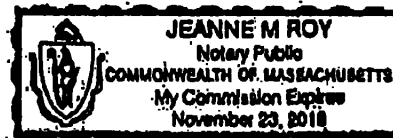
The Complainant listed below hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.


Patricia D. Cornwell

Sworn to and subscribed before me this 1st day of October, 2012.


Notary Public



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CEI ENTERPRISES, INC. a/k/a CORNWELL
ENTERPRISES, INC., PATRICIA D.
CORNWELL, and STACI GRUBER, Ph.D.,

Plaintiffs,

v.

ANCHIN, BLOCK & ANCHIN LLP,

Defendant.

Civil Action No. 09-11708-GAO

**MOTION TO EXCLUDE, TO COMPEL,
AND FOR CONTINUANCE**

**DEFENDANTS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION TO PRECLUDE TESTIMONY AND EVIDENCE
CONCERNING THE GOVERNMENT INVESTIGATION INTO CAMPAIGN
FINANCE VIOLATION AND LATE-DISCLOSURE OF LEGAL INVOICES;
AND ALTERNATIVE MOTION TO COMPEL**

Anchin Block & Anchin, LLP ("Anchin") and Evan H. Snapper ("Snapper") (collectively "Defendants") respectfully move for an Order precluding Plaintiffs' from introducing evidence, testimony, or any line of questioning concerning the Department of Justice ("DOJ") investigation into Patricia Cornwell concerning the campaign bundling incident. Moreover, Defendants respectfully move to preclude Plaintiffs from drawing any inferences from the government's investigation. As a basis for this motion, Defendants assert that this issue is irrelevant and highly prejudicial. Additionally, Defendants respectfully move to preclude the late disclosure of heavily redacted legal invoices provided by Plaintiffs to substantiate the supposed damages incurred by Cornwell in defending the DOJ investigation. In the alternative, Defendants' respectfully move to compel disclosure of additional information.

Background

This is primarily a business dispute arising out of Anchin's work as accountants and business managers to CEI Enterprises, Inc. ("CEI") and Patricia Cornwell ("Cornwell"). Snapper, as a former Anchin principal, was the person primarily responsible for handling Plaintiffs' account during most of the relationship. Part of Snapper's job responsibilities included providing advice and assistance to Cornwell in connection with her donations to various political campaigns. In furtherance of Cornwell's desire to anonymously support the campaign of her friend Jim Gilmore and later request that Snapper find a means to support Hillary Clinton's presidential campaign above and beyond the campaign finance law limitations, which she had already maxed, Snapper arranged for straw persons (including himself, his wife, Cornwell's family members certain Anchin employees) to make donations in their own name to these campaigns with the understanding that they would be reimbursed by Cornwell. These transactions were in violation of federal campaign finance laws. Although Cornwell was generally aware of these transactions, she claims that she did not realize they were illegal.

In 2009, after the relationship between Plaintiffs and Defendants ceased and this lawsuit commenced, Snapper self-reported the incident to the FBI and the Federal Election Committee ("FEC"). As a result of Snapper's self-report, the DOJ and the FEC initiated investigations into the facts and circumstances surrounding the violations. Snapper, Anchin and Cornwell were among those that the DOJ and FEC investigated. Ultimately, Snapper pleaded guilty to one count of providing false information—a felony—and settled charges with the FEC. Anchin received no action letters from both the DOJ and FEC indicating that the firm would not be charged. Although the defense

has no way of knowing why Cornwell has not been charged, Plaintiffs' counsel has represented that the DOJ chose not to charge Cornwell. The FEC investigation remains open.

Argument

I. Proposed Testimony Concerning The Government's Criminal Investigation And Results Thereof Are Irrelevant

Only relevant evidence is admissible. *Fed.R.Evid.* 402. Here, Plaintiffs have indicated their intention to introduce evidence of the DOJ's decision not to prosecute Cornwell as evidence that Cornwell was somehow innocent, wrongly investigated, and deserves to recover the legal fees she incurred because she was forced to respond to the government's investigation. Pls. Fifth Amend. Comp. ¶ 34 (b) attached hereto as Exhibit A. The government's decision not to prosecute Cornwell is not evidence that she is innocent, so it is irrelevant to this case before the Court. Courts that have considered this issue have concluded that the government's decision not to prosecute is not admissible as evidence of innocence. In *U.S. v. Candelaria-Silva*, 166 F.3d 19 (1st Cir. 1999), a criminal drug case, the 1st Circuit upheld the District Court's decision to exclude the defendants' proposed evidence concerning their recent acquittal of a drug offense in a related case because such evidence was irrelevant. *Id.* at 34. Specifically, the 1st Circuit wrote that "cases are dismissed for many reasons unrelated to the defendant's guilt. The introduction of evidence of a dismissal could well mislead the jury into thinking that a defendant was innocent of the dismissed charge when no such determination has been made." *Id.* at 35. This reasoning extends to the civil context as well. See *In re Carbon Black Antitrust Litigation*, No. 03-CV-10191, 2005 WL 2323184 *2 (U.S.D.C., D. Ma.,

Sept. 8, 2005). In *Carbon Black*, an antitrust case, this Court preemptively stated that a party “will not be permitted to introduce evidence on the merits that the closing of the [antitrust] investigation is somehow evidence that no conspiracy exists.” *Id.* at *1.

Whether in the criminal or civil context, Plaintiffs wish the finder of fact to draw certain inferences based on the fact that the government decided not to prosecute Cornwell after Snapper cooperated with the authorities. Plaintiffs assert that Snapper “falsely” caused the government to investigate Cornwell, and the government’s decision not to prosecute Cornwell is proof positive that Cornwell is free of blame. However, the reasons underlying the government’s decision not to prosecute Cornwell is irrelevant. Snapper neither directed nor caused the government to investigate Cornwell. The government made its own decisions based on what it thought was the most prudent course of action. As *Candelaria-Silva* explicitly stated, cases are dismissed for a variety of reasons, none of which is indicative of a party’s culpability. As such, Plaintiffs cannot attempt to introduce any evidence of the investigation to prove that Cornwell was somehow wronged by virtue of the government not filing charges against her. Therefore, evidence that the DOJ investigation did not result in Cornwell being charged should be excluded because it is not probative of her innocence.

II. Allowing Testimony Concerning the Government Investigation Would Be Unfairly Prejudicial

Assuming *arguendo* that testimony concerning the DOJ investigation is relevant, such evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” *Fed. R. Evid.* 403.

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The risk of unfair prejudice and confusion of the issues against Defendants is apparent: Snapper's decision to report the violations to the FBI and FEC ultimately resulted in him being charged and pleading guilty, but did not result in Cornwell being charged. However, Snapper is not on trial as to whether or not he violated the campaign finance laws. In fact, Snapper's guilt has no probative value concerning Cornwell's claim that she is innocent and was falsely accused by Snapper. The fact that Snapper was charged and Cornwell was not does not prove that she was innocent because Snapper's actions were clearly intended to benefit Cornwell since she admittedly wanted to support these candidates. Snapper had nothing to gain, but lost close to everything in the process. He clearly will be tainted in the eyes of the jury as a result of the conviction and the disparate results may confuse the jury. For example, the jury may believe that they do not have to assess what Cornwell knew since the government already determined that it would proceed only against Snapper, but Cornwell admittedly had a general understanding of both the campaign finance law limitations and that Snapper was arranging for people to contribute to candidates in furtherance of her desire to support them. As such, any testimony concerning the DOJ investigation, especially Snapper's conviction and the government's decision not to prosecute Cornwell, would be highly prejudicial, while proving nothing. Snapper may have pleaded guilty to one criminal count, but it is up to the jury to determine, based on the evidence before them in this trial, the level of culpability between Cornwell and Snapper as it relates to the campaign violation. The government's criminal investigation, therefore, lacks probative value, is highly prejudicial, and Plaintiffs should be precluded from introducing any evidence